

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA**

CHARLESTON DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

v.

CRIMINAL ACTION NO. 2:06-cr-00237

MARLON RUSH,

Defendant.

MEMORANDUM OPINION AND JUDGMENT ORDER

Pending before the Court is a motion, brought pursuant to 18 U.S.C. § 3582(c)(2), to reduce the defendant's sentence based on a reduction in the applicable sentencing guideline. On November 1, 2007, the United States Sentencing Guidelines were amended to reduce by two levels the guidelines in Section 2D1.1 for cocaine base (also known as crack). Subsequently, the Sentencing Commission amended Section 1B1.10 to make the crack amendment retroactive, effective March 3, 2008. This case was designated for expedited consideration.

The Court has received and considered the original Presentence Investigation Report, original Judgment and Commitment Order and Statement of Reasons, plea agreement, and addendum to the PSI from the Probation Office, and received any materials submitted by the parties on this issue. The Court has also considered the applicable factors under 18 U.S.C. § 3553(a), consistent with § 3582(c)(2), and public safety. The United States does not object to the proposed reduction.

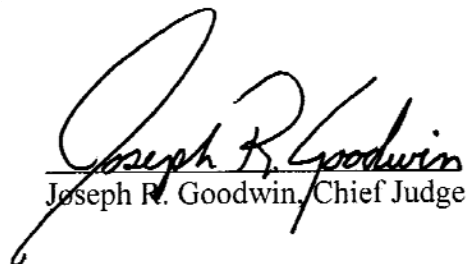
The original Presentence Investigation Report attributed 258.8 grams of cocaine base to the defendant. This resulted in a base offense level of 34. The defendant's base offense level was

decreased by three levels for his acceptance of responsibility, resulting in a total offense level of 31. Given a total offense level of 31 and a criminal history category of II, the defendant's original guideline range was 121 to 151 months imprisonment. The court sentenced the defendant to 121 months.

Based on the foregoing considerations, the Motion is **GRANTED**. The Court **ORDERS** that Defendant's base offense level be reduced by two levels, resulting in a new total offense level of 29, and a guideline range of 97 to 121 months. It is further **ORDERED** that Defendant's previous sentence be reduced to a period of 97 months, with credit for time served to date. This Order is subject to the prohibition contained within U.S.S.G. §1B1.10(b)(2)(C).

The Court **DIRECTS** the Clerk to send a copy of this Order to the defendant and counsel, the United States Attorney, the United States Probation Office, the Federal Bureau of Prisons and the United States Marshals.

ENTER: May 18, 2010



Joseph R. Goodwin
Joseph R. Goodwin, Chief Judge